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**Manor Oak Skilled Nursing Facilities, Inc. d/b/a
Manor Oak Life Center and Service Employees
International Union, Local 1199 Upstate, AFL-
CIO, CLC. Case 3-CA-23385**

February 14, 2003

DECISION AND ORDER

**BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH**

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by Service Employees International Union, Local 1199 Upstate, AFL-CIO, CLC, the Union, on November 30, 2001, and January 3, February 13, and March 13, 2002, the General Counsel issued the complaint on July 26, 2002, against Manor Oak Skilled Nursing Facilities, Inc. d/b/a Manor Oak Life Center, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act.¹ The Respondent failed to file an answer.

On September 17, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On September 19, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Mo-

¹ On May 3, 2002, the Regional Director for Region 3 approved an informal settlement agreement entered into by the Respondent. The complaint alleges, and the Respondent by its failure to file an answer admits, that since about May 3, 2002, the Respondent has failed and refused to comply with the terms of the settlement agreement by failing to post a Notice to Employees and failing to implement the other requirements of the settlement agreement. Accordingly, on July 26, 2002, the Regional Director issued an order revoking settlement agreement, and instituted further proceedings, including the issuance of the instant complaint.

tion for Summary Judgment disclose that the Region, by letter dated and sent September 5, 2002, by facsimile transmission and certified mail, notified the Respondent that unless an answer was received by September 10, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with places of business in Warsaw, Jamestown, and Buffalo, New York (the Respondent's facilities), has been engaged in the operation of nursing homes. Annually, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000, and purchased and received at the Respondent's facilities goods and materials valued in excess of \$5000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

| | | |
|------------------|---|-----------------------------|
| Donald G. Larder | - | Chairman of the Board |
| Donna M. Mikula | - | President |
| Rosalie Armitage | - | Director of Human Resources |

The following employees of the Respondent (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent described in Article 2—Recognition, of the collective-bargaining agreement between Respondent and the Union, which was effective from March 9, 2000, to April 2, 2002, and which was automatically extended by its terms until April 2, 2003.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and at all material times, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining

agreement, which was effective from March 9, 2000 to April 2, 2002, and which was automatically extended by its terms until April 2, 2003.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about December 13, 2001, the Respondent, by Donna Mikula, in a memorandum distributed to its employees and posted on a bulletin board at the Respondent's Jamestown facility, threatened employees with loss of employment in response to employees contacting the media concerning work-related problems.

On about January 11, 2002, the Respondent, by Donna Mikula, in a memorandum distributed to all employees at the Respondent's Jamestown facility, impliedly threatened employees that their continued union activities would negatively affect their terms and conditions of employment.

Since about September 28, 2001, the Union, by letter, has requested that the Respondent furnish the Union with the following information:

An updated seniority list from all three facilities, showing the name, address, phone number, shift, status (part-time or full-time), job classification seniority and Manor Oak seniority and rates of pay.

Since on or about November 1, 2001, the Union, by letter, has requested that the Respondent furnish the Union with the following information:

1. Name of carrier for your Workers' Compensation.
2. Documentation showing coverage.
3. If coverage was terminated, date of termination.
4. Name of new carrier for Workers' Compensation.
5. Date that coverage was started with new carrier.
6. Names and telephone number of contact person for previous and current carrier.
7. If you do not have coverage with a carrier, documentation showing who will be responsible and proof that the financial burden can be met.
8. Any documentation you have been requested to provide by a Health Care Provider or Institution guaranteeing payment for services.
9. Documentation showing who is responsible for Workers' Compensation payments to employees on compensation.
10. Names and phone numbers of all employees who are currently on compensation and therefore impacted by the lack and/or change of coverage.

Since on or about January 4, 2002, the Union, by letter has requested that the Respondent furnish the Union with the following information:

1. List of names of all employees at all three facilities who are enrolled in a Health Insurance Plan.
2. The list should show which plan they are enrolled in and if they have single or family coverage.
3. Documentation showing the current status of the premiums of the plans.
4. If employees are not enrolled in a Health Insurance Plan, please list those employees, indicating if they are enrolled in any other plans offered through the benefits program.
5. Please indicate how much money is contributed to these plans by the Employer and by the employee.
6. Status of these plans (401K, supplemental disability, life insurance, etc.).
7. Documentation showing the carrier of your mandated disability coverage.
8. Name of plan, name and telephone number of contact person for the plan.
9. Documentation showing the effective date of the plan.

Since on or about January 22, 2002, the Union, by letter, has requested that Respondent furnish the Union with the following information:

1. Names of employees who participate in the self-directed benefit plan program, which plan(s) they participate in.
2. The amount of money paid into these plans by the employer. (Identify each individual with plan(s) they participate in.)
3. The amount of money paid into these plans by the employee. (Identify plan(s) by name for each employee.)
4. Explanation of how these deductions are shown on employees' check stubs for each of the facilities, as well as any taxes paid if applicable and the amount of tax for each employee.
5. Packet that new employees are given explaining the benefit plans.
6. Any other information available on the self-directed plans.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about September 28, 2001, the Respondent has failed and refused to furnish the Union with the information requested on September 28, 2001. Since about November 6, 2001, the Respondent has failed and refused to furnish the Union with the information requested on November 1, 2001. Since about January 11, 2002, the Respondent has failed and refused to furnish the Union

with the information requested on January 4, 2002. Since about January 28, 2002, the Respondent has failed and refused to furnish the Union with the information requested on January 22, 2002.

From about July 30, 2001 until mid-September 2001, the Respondent failed to remit dues to the Union pursuant to Article 4 of the collective-bargaining agreement. From about November 2001 until February 2002, the Respondent failed to make pension payments pursuant to Article 24 of the collective-bargaining agreement. The subjects set forth above relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for the purpose of collective bargaining. The Respondent failed to remit the dues and failed to make the pension payments without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct, and without the consent of the Union.

CONCLUSIONS OF LAW

1. By threatening employees with loss of employment in response to employees contacting the media concerning work-related problems and threatening employees that their continued union activities would negatively affect their terms and conditions of employment, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By failing and refusing to furnish the Union with the requested information, and by failing to remit dues to the Union and to make pension payments without giving the Union prior notice and an opportunity to bargain and without the Union's consent, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit dues to the Union from about July 30, 2001 until mid-September 2001, we shall order the Respondent to remit dues to the Union as required by Article 4 of the collective-bargaining agreement, and to

reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing to make pension payments pursuant to Article 24 of the collective-bargaining agreement from about November 2001 until February 2002, we shall order the Respondent to make whole its unit employees by making all delinquent pension payments, including any additional amounts due in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).²

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with the information it requested on September 28 and November 1, 2001, and January 4 and 22, 2002, we shall order the Respondent to furnish the information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Manor Oak Skilled Nursing Facilities, Inc. d/b/a Manor Oak Life Center, Warsaw, Jamestown, and Buffalo, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of employment in response to employees contacting the media concerning work-related problems.

(b) Threatening employees that their continued union activities will negatively affect their terms and conditions of employment.

(c) Failing and refusing to provide Service Employees International Union, Local 1199 Upstate, AFL-CIO, CLC, with requested information that is necessary and relevant to its performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees of Respondent described in Article 2—Recognition, of the collective-bargaining agreement between Respondent and the Union, which was effective from March 9, 2000 to April 2, 2002, and which was automatically extended by its terms until April 2, 2003.

(d) Failing to remit dues to the Union pursuant to the collective-bargaining agreement.

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

(e) Failing to make pension payments pursuant to the collective-bargaining agreement.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union the information it requested by letters dated September 28 and November 1, 2001, and January 4 and 22, 2002.

(b) Remit to the Union dues that were not remitted from July 30, 2001 until mid-September 2001, pursuant to the collective-bargaining agreement, with interest, in the manner set forth in the remedy section of this decision.

(c) Make the pension payments required by the collective-bargaining agreement that were not made from November 2001 until February 2002, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Warsaw, Jamestown, and Buffalo, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at such facility(s) at any time since July 30, 2001.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., February 14, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with loss of employment in response to employees contacting the media concerning work-related problems.

WE WILL NOT threaten employees that their continued union activities will negatively affect their terms and conditions of employment.

WE WILL NOT fail and refuse to provide Service Employees International Union, Local 1199 Upstate, AFL-CIO, CLC, with requested information that is necessary and relevant to its performance of its duties as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees of ours described in Article 2—Recognition, of the collective-bargaining agreement between us and the Union, which was effective from

March 9, 2000 to April 2, 2002, and which was automatically extended by its terms until April 2, 2003.

WE WILL NOT fail to remit dues to the Union pursuant to the collective-bargaining agreement.

WE WILL NOT fail to make pension payments pursuant to the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union the information it requested by letters dated September 28 and November 1, 2001, and January 4 and 22, 2002.

WE WILL remit to the Union dues that were not remitted from July 30, 2001 until mid-September 2001, pursuant to the collective-bargaining agreement, with interest.

WE WILL make the pension payments required by the collective-bargaining agreement that were not made from November 2001 until February 2002.

MANOR OAK SKILLED NURSING
FACILITIES, INC. D/B/A MANOR OAK LIFE
CENTER